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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

AUG 19 2003

File: [redacted] Office: Vermont Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be rejected.

The petitioner is seeking classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), to perform services as a pastoral assistant at an annual salary of $5,000.

Pursuant to 8 C.F.R. § 103.3(a)(2)(i), an affected party has 30 days after service of a decision to file an appeal with the office that made the unfavorable decision. The record reflects that the director denied the petition on multiple grounds in a decision dated June 4, 2002. The appeal was untimely filed on July 9, 2002. Upon submission of the appeal, the petitioner states:

> We are appealing this decision because we believe that the [Bureau] has made some mistakes in the law and in understanding the facts in the reasons given for the denial. We have also misunderstood the instructions and accidentally sent in obsolete information. We have since consulted an immigration lawyer and will be sending you more information that we hope will clear up any questions you have about the validity of this application.

The petitioner subsequently submitted a letter in support of the appeal dated August 5, 2002.

The regulations at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) state that an appeal which is not filed within the time allowed must be rejected as improperly filed.

The regulations at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) state that if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

A review of the evidence that the petitioner submits on appeal reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). All evidence submitted was previously available and could have been discovered or presented in the previous proceeding. It is further noted that the petitioner has submitted evidence with this motion that was originally requested by the director in a request for additional evidence dated January 8, 2002. As the petitioner was previously put on notice and provided with a

reasonable opportunity to provide the required evidence, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen.

Furthermore, 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [Bureau] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner has not submitted any document that would meet the requirements of a motion to reconsider. The petitioner does not argue, and has not provided any precedent decisions to establish, that the decision was based on an incorrect application of law or Bureau policy.

The appeal was untimely filed and does not meet the requirements for consideration as a motion to reopen or a motion to reconsider. Therefore, the appeal must be rejected.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is rejected.